

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint No. : 130 of 2018
First date of hearing : 08.05.2018
Date of Decision : 16.10.2018

Mr Rohit Kumar Mangla
R/o Flat No-D3/401,Parsvnath Exotica, Golf
Course Road, Sector-53, Gurugram, Haryana

Complainant

Versus

M/s Emaar MGF Land Limited
Registered Office : 306-308, Square One, C-2,
District Center, Saket, New Delhi-110017
Marketing Office : Emaar MGF Business
Park, Mehrauli-Gurugram Road, Sikandarpur
chowk, Sector 28, Gurugram-122002

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Sukhbir Yadav

Advocate for the complainant

Shri Dheeraj Kapoor

Advocate for the respondent

ORDER

1. A complaint dated 02.04.2018 was filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 read



with rule 28 of the Haryana Real Estate (regulation and development) Rules, 2017 by the complainant Mr Rohit Kumar Mangla against the promoter M/s Emaar MGF land limited on account of violation of clause 16 (a) of the builder-buyer agreement executed on 02.04.2010 for unit no EPS-FF-070 in the project “Emerald Plaza in Emerald Hills” for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	“Emerald Plaza in Emerald Hills” at sector 65, Gurugram
2.	Nature of real estate project	Commercial complex
3.	DTCP license	10 of 2009
4.	Unit no.	EPS-FF-070 (357.18 sq. ft Super Area)
5.	Project area	3.963 Acres
6.	Registered/ Not Registered	Not Registered
7.	RERA registration no	Not Applicable
8.	Date of booking	30.01.2010
9.	Date of retail space buyer agreement	02.04.2010
10.	Total consideration	Rs. 26,74,880
11.	Total amount paid by the complainant	Rs. 26,87,400
12.	Payment plan	Construction Linked Plan
13.	Date of delivery of possession.	Clause 16 (a) - 30 months from the date of



		execution of BBA + 120 days grace period i.e. 02.02.2013
14.	Delay of number of months/ years upto 16.10.2018	5 years 8 months 14 days
15.	Penalty clause as per retail space buyer agreement dated 02.04.2010	Clause 18 (a)- 9% per annum

3. As per the details provided above, which have been checked as per record of the case file. A retail space buyer agreement is available on record for Unit No. EPS-FF-070 according to which the possession of the aforesaid unit was to be delivered by 02.02.2013. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability till date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 08.05.2018. The case came up for hearing on 08.05.2018, 07.06.2018, 12.07.2018, 25.07.2018, 16.08.2018, 12.09.2018, 16.10.2018. The reply has been filed on behalf of the respondent on 31.05.2018



FACTS OF THE CASE

5. The complainant submitted that the complainant visited the site of project named “Emerald Plaza”, Sector 65, Gurugram. The location of the project was excellent, therefore they consulted the local representative of the developer. The local representative of developer assured the complainant with special characteristics of project and other world class amenities of the project.
6. Relying on the promises and undertakings given by the respondent in the brochures and catalogues, the complainant has booked a shop bearing no EPS-FF-070 in ‘Emerald Plaza’ at Sector 65, Gurugram developed by the respondent.
7. Thereafter, the complainant continued to pay the instalments as per the payment schedule of the retail space buyer agreement and had already paid more than 90% amount i.e Rs 25,55,521/- till 31.07.2017 along with interest and other allied charges.
8. As per Clause 16 (a) of the retail space buyer agreement, the respondent had agreed to deliver the possession of the flat within 30 months from the date of signing of the retail space buyer agreement with an extended period of 120 days and



accordingly the flat had to be delivered till 02.02.2013. Respondent failed to deliver the possession of booked unit on assured date of 02.02.2013

9. The complainant submitted that the complainant regularly visited the project site but was surprised to see that the construction was very slow. The respondent constructed the basic structure and no progress is observed on finishing and landscaping work.
10. The complainant submitted that the respondent despite receiving 95 % (approx.) of total consideration and despite of repeated requests and reminders over phone calls and personal visits of the complainant, the respondent have failed to deliver the possession of the allotted shop to the complainant by the assured date.
11. The complainant also alleged that the respondent offered possession of increased area of 380.73 sq ft of allotted shop but the actual area of shop varies between 120 sq ft and 130 sq ft. In spite of several requests, the respondent failed to provide actual carpet area details and to allow complainant to physically visit and verify the area.
12. The complainant also submitted that the respondent promised to construct the 3 storey basement parking and



raised demand for same vide demand letter dated 25.05.2012 but constructed only 2 storey basement parking.

ISSUES RAISED BY THE COMPLAINANT

13. The issues raised by the complainant are as follows :
- i. Whether the respondent has delivered the possession of the shop to the complainant?
 - ii. Whether the respondent should be directed to cancel the agreement and refund the total amount paid by the complainant along with the interest calculated @ 24% per annum ?
or
Whether the respondent should be directed to deliver the possession of the allotted shop to the complainant along with delay interest?
 - iii. Whether the increase in area of allotted shop from booked area have any reasonable justification?
 - iv. Whether the complainant is entitled to get third party inspection for rechecking of carpet area and super area?
 - v. Whether complainant is entitled for compensation for mental agony and harassment? If yes, what amount?
 - vi. Whether complainant is entitled for any other relief?



RELIEF SOUGHT

14. The reliefs sought by the complainant are as follows :

i. To direct the respondent to deliver the possession of booked shop within a period of 3 months from the date of judgment, complete in all respects.

OR

ii. To direct the respondent to refund the total amount of Rs. 26,87,400/- paid by the complainant to the respondent party as instalments towards purchase of shop along with interest @ 24% per annum compounded from the date of deposit i.e 30.01.2010.

iii. To direct the respondent to pay a compensation amount of Rs.10,00,000/- (Ten Lakhs) for deficiency in service.

iv. To direct the respondent to pay an compensation amount of Rs 10,00,000 on account of causing mental agony, torture and physical harassment caused to the complainant due to negligence and unfair trade practice of the respondent parties.

v. To direct the respondent to pay compensation amount of Rs.5,00,000/- as litigation expenses



- vi. To direct the respondent to pay an amount of Rs.5,00,000/- for not constructing 3rd floor of basement parking as agreed. .
- vii. To direct the respondent to complete and seek all necessary governmental clearances regarding infrastructural i.e. Occupation Certificate and FIRE NOC and other facilities including road, water, sewerage, electricity, environmental etc. before handing over the physical possession of the Shop.
- viii. To direct the respondent to provide third party audit to ascertain / measure accurate areas of the shop and facilities, more particularly, as to the "super area" and "built-up area".
- ix. Any other relief / direction which the authority deems fit and proper in the facts and circumstances of the present complaint

REPLY BY THE RESPONDENT

15. The respondent submitted that the present complaint is not maintainable before this authority. The authority has no jurisdiction to entertain the present complaint. The respondent had filed a separate application for rejection of the complaint on the ground of jurisdiction.



The respondent submitted that according to Section 17 of the Act, the complaint pertaining to compensation and interest under section 12,14,18 and section 19 of Real Estate (Regulation and Development) Act,2016 is maintainable only before the adjudicating officer.

16. The respondent also submitted that the project of the respondent in question is not an ongoing project according to rule 2 (1) (o). As per the definition of 'ongoing project' under rule 2 (1) (o) of the said rules, any project for which an application for occupation certificate, part thereof or completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of this authority. In the present case, the respondent had applied for the occupation certificate for the said project on 22.05.2017 which is prior to the date of publication of the Rules i.e 28.07.2017 and hence the said project is not an ongoing project. The said project is neither covered under the Haryana Real Estate (Regulation and Development) Rules,2017 and nor registered with this authority



17. The respondent submitted that according to sub code 4.10 (5) of the Haryana Building Code,2017, if after submission of an application for occupation certificate or part thereof, there

is no communication from the competent authority for 60 days then there is deemed to be an occupation certificate granted to the applicant and in the present case the application for occupation certificate was made on 22.05.2017 and occupation certificate was deemed to be granted after 60 days i.e 21.07.2017 which is prior to the publication of rules on 28.07.2017

18. The respondent also submitted that the complaint is not supported by any proper affidavit with proper verification. The respondent submitted that the respondent has completed the construction of the said project and has already obtained occupation certificate dated 08.01.2018 for the said commercial unit and vide notice of possession dated 23.01.2018 has already offered the possession to the complainant.

DETERMINATION OF ISSUES

19. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority is as under:

- i. **First issue** : The authority came across that the project in question is ready for possession as the respondent had received the occupation certificate vide memo no



ZP-560-A/SD(BS)/2017/528 dated 08.01.2018 but the respondent has failed to deliver the possession of the booked unit on due date and as per clause 16 (a) of apartment buyer's agreement, the possession of the flat was to be handed over within 30 months from the date of execution of retail space buyer agreement with a grace period of 120 days. In the present case, the due date of possession was 02.02.2013 and the possession has been delayed by five years eight months and fourteen days till the date of decision.

As the possession of the flat was to be delivered by 1.02.2017 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

"11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:



Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

- ii. **Second issue** : The authority is of the view that as the construction of the project is fully completed evident by the grant of occupation certificate vide memo no ZP-560-A/SD(BS)/2017/528 dated 08.01.2018, the respondent is directed to offer the possession of the booked shop to the complainant along with prescribed interest of 10.45% per annum determined according to Rule 15 of HRERA Rules for the period of delay from the assured date of delivery of possession i.e 02.02.2013 till the date of offer of possession.



- iii. **Third issue** : The increase in booked area of the allotted shop by the respondent has a reasonable justification by the virtue of clause 6 (d) of the retail space buyer agreement.

Clause 6 (d) of Retail space buyer agreement is reproduced hereunder as :

“In case of any alteration/modification resulting in any increase or decrease in super area of the retail space in the sole opinion of the company at any time prior to and upon the grant of occupation certificate, the company shall intimate the Allottee in writing of such increase or decrease in Super Area thereof and the resultant change if any in the total Sale Consideration at the original rate of the Retail Space. Further the company shall raise additional demand in case of an increase in the super area of the Retail Space and the Allottee shall be liable to pay the same within thirty (30) of raising such demand by the company, failing which, the Allottee shall without prejudice to any other right of the Company, be liable to pay delayed interest as per the terms set out in clause 15 (a) (i) and clause 15 (a) (ii). For any decrease in the Super Area, the said reduced amount shall stand adjusted in the subsequent instalments payable by the Allottee”

- iv. **Fourth issue** : The authority hereby direct the respondent to supply the detailed calculation based on occupation certificate issued by DTCP and indicating FAR area and non FAR area and loading of super area in this project. In case the complainant is



not satisfied with the reply then he may approach to this authority again.

- v. **Fifth issue** : The authority is of the view that the present claim of compensation is not maintainable before this authority. This authority has no jurisdiction to entertain the compensation claims. According to Section 17 of the Act, the complaints pertaining to compensation and interest under section 12,14,18 and section 19 of Real Estate (Regulation and Development) Act,2016 is maintainable only before the adjudicating officer

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

FINDINGS OF THE AUTHORITY

20. Jurisdiction of the authority-

i. Subject Matter Jurisdiction

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land*



Ltd. leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

ii. **Territorial Jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

DECISION AND DIRECTIONS OF THE AUTHORITY

21. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- i. As per provision of Section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 the respondent is duty bound to pay the interest at the prescribed rate i.e.



10.45% for every month of delay from the due date of possession i.e. 02.02.2013 till the actual date of possession.

- ii. The arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made before 10th of subsequent month till handing over the possession.

22. The complaint stands disposed of

23. The order is pronounced.

24. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

HARERA
GURUGRAM



Dated : 16.10.2018

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 16.10.2018
Complaint No.	130/2018 Case titled as Mr. Rohit Kumar Mangla V/s M/s Emaar MGF Land Ltd
Complainant	Mr. Rohit Kumar Mangla
Represented through	Shri Sukhbir Yadav, Advocate for the complainant
Respondent	M/s Emaar MGF Land Ltd
Respondent Represented through	Shri Dheeraj Kapoor, Advocate for the respondent.
Last date of hearing	12.09.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Since written arguments have already been placed on record, the matter stands disposed of. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)